

Calendar No. 515

109TH CONGRESS
2^D SESSION**H. R. 1036**

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 2005

Received; read twice and referred to the Committee on the Judiciary

JULY 13, 2006

Reported by Mr. SPECTER, with an amendment

[Omit the part struck through and insert the part printed in *italic*]**AN ACT**

To amend title 17, United States Code, to make technical corrections relating to Copyright Royalty Judges, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Copyright Royalty
5 Judges Program Technical Corrections Act”.

6 **SEC. 2. REFERENCE.**

7 Any reference in this Act to a provision of title 17,
8 United States Code, refers to such provision as amended

1 by the Copyright Royalty and Distribution Reform Act of
 2 2004 (Public Law 108–419) and the Satellite Home View-
 3 er Extension and Reauthorization Act of 2004 (title IX
 4 of division J of Public Law 108–447).

5 **SEC. 3. AMENDMENTS TO CHAPTER 8 OF TITLE 17, UNITED**
 6 **STATES CODE.**

7 Chapter 8 of title 17, United States Code, is amended
 8 as follows:

9 (1) Section 801(b)(1) is amended, in the matter
 10 preceding subparagraph (A), by striking “119 and
 11 1004” and inserting “119, and 1004”.

12 (2) Section 801 is amended by adding at the
 13 end the following:

14 “(f) EFFECTIVE DATE OF ACTIONS.—On and after
 15 the date of the enactment of the Copyright Royalty and
 16 Distribution Reform Act of 2004, in any case in which
 17 time limits are prescribed under this title for performance
 18 of an action with or by the Copyright Royalty Judges, and
 19 in which the last day of the prescribed period falls on a
 20 Saturday, Sunday, holiday, or other nonbusiness day with-
 21 in the District of Columbia or the Federal Government,
 22 the action may be taken on the next succeeding business
 23 day, and is effective as of the date when the period ex-
 24 pired.”.

25 (3) Section 802(f)(1)(A) is amended—

1 (A) in clause (i), by striking “clause (ii) of
2 this subparagraph and subparagraph (B)” and
3 inserting “subparagraph (B) and clause (ii) of
4 this subparagraph”; and

5 (B) by striking clause (ii) and inserting the
6 following:

7 “(ii) One or more Copyright Royalty
8 Judges may, or by motion to the Copyright
9 Royalty Judges, any participant in a proceeding
10 may, request from the Register of Copyrights
11 an interpretation of any material questions of
12 substantive law that relate to the construction
13 of provisions of this title and arise in the course
14 of the proceeding. Any request for a written in-
15 terpretation shall be in writing and on the
16 record, and reasonable provision shall be made
17 to permit participants in the proceeding to com-
18 ment on the material questions of substantive
19 law in a manner that minimizes duplication and
20 delay. Except as provided in subparagraph (B),
21 the Register of Copyrights shall deliver to the
22 Copyright Royalty Judges a written response
23 within 14 days after the receipt of all briefs and
24 comments from the participants. The Copyright
25 Royalty Judges shall apply the legal interpreta-

tion embodied in the response of the Register of Copyrights if it is timely delivered, and the response shall be included in the record that accompanies the final determination. The authority under this clause shall not be construed to authorize the Register of Copyrights to provide an interpretation of questions of procedure before the Copyright Royalty Judges, the ultimate adjustments and determinations of copyright royalty rates and terms, the ultimate distribution of copyright royalties, or the acceptance or rejection of royalty claims, rate adjustment petitions, or petitions to participate in a proceeding.”.

(4) Section 802(f)(1)(D) is amended by inserting a comma after “undertakes to consult with”.

(5) Section 803(a)(1) is amended—

(A) by striking “The Copyright” and inserting “The Copyright Royalty Judges shall act in accordance with this title, and to the extent not inconsistent with this title, in accordance with subchapter II of chapter 5 of title 5, in carrying out the purposes set forth in section 801. The Copyright”; and

(B) by inserting after “Congress, the Register of Copyrights,” the following: “copyright arbitration royalty panels (to the extent those determinations are not inconsistent with a decision of the Librarian of Congress or the Register of Copyrights),”.

(6) Section 803(b) is amended—

(A) in paragraph (1)(A)(i)(V)—

(i) by striking “in the case of” and inserting “the publication of notice requirement shall not apply in the case of”; and

(ii) by striking “, such notice may not be published.”;

(B) in paragraph (2)—

(i) in subparagraph (A), by striking “, together with a filing fee of \$150”;

(ii) in subparagraph (B), by striking “and” after the semicolon;

(iii) in subparagraph (C), by striking the period and inserting “; and”; and

(iv) by adding at the end the following:

“(D) the petition to participate is accompanied by either—

1 “(i) in a proceeding to determine roy-
 2 alty rates, a filing fee of \$150; or

3 “(ii) in a proceeding to determine dis-
 4 tribution of royalty fees—

5 “(I) a filing fee of \$150; or

6 “(II) a statement that the peti-
 7 tioner (individually or as a group) will
 8 not seek a distribution of more than
 9 \$1000, in which case the amount dis-
 10 tributed to the petitioner shall not ex-
 11 ceed \$1000.”;

12 (C) in paragraph (3)(A)—

13 (i) by striking “(A) IN GENERAL.—
 14 Promptly” and inserting “(A) COMMENCE-
 15 MENT OF PROCEEDINGS.—

16 “(i) RATE ADJUSTMENT PRO-
 17 CEEDING.—Promptly”; and

18 (ii) by adding at the end the fol-
 19 lowing:

20 “(ii) DISTRIBUTION PROCEEDING.—
 21 Promptly after the date for filing of peti-
 22 tions to participate in a proceeding to de-
 23 termine the distribution of royalties, the
 24 Copyright Royalty Judges shall make
 25 available to all participants in the pro-

ceeding a list of such participants. The initiation of a voluntary negotiation period among the participants shall be set at a time determined by the Copyright Royalty Judges.”.

(D) in paragraph (4)(A), by striking the last sentence; and

(E) in paragraph (6)(C)—

(i) in clause (i)—

(I) in the first sentence, by inserting “and written rebuttal statements” after “written direct statements”;

(II) in the first sentence, by striking “which may” and inserting “which, in the case of written direct statements, may”; and

(III) by striking “clause (iii)” and inserting “clause (iv)”;

(ii) by amending clause (ii)(I) to read as follows:

“(ii)(I) Following the submission to the Copyright Royalty Judges of written direct statements and written rebuttal statements by the participants in a pro-

ceeding under paragraph (2), the Copyright Royalty Judges, after taking into consideration the views of the participants in the proceeding, shall determine a schedule for conducting and completing discovery.”;

(iii) by amending clause (iv) to read as follows:

“(iv) Discovery in connection with written direct statements shall be permitted for a period of 60 days, except for discovery ordered by the Copyright Royalty Judges in connection with the resolution of motions, orders, and disputes pending at the end of such period. The Copyright Royalty Judges may order a discovery schedule in connection with written rebuttal statements.”; and

(iv) by amending clause (x) to read as follows:

“(x) The Copyright Royalty Judges shall order a settlement conference among the participants in the proceeding to facilitate the presentation of offers of settlement among the participants. The settle-

1 ment conference shall be held during a 21-
2 day period following the 60-day discovery
3 period specified in clause (iv) and shall
4 take place outside the presence of the
5 Copyright Royalty Judges.”.

6 (7) Section 803(c)(2)(B) is amended by striking
7 “concerning rates and terms”.

8 (8) Section 803(c)(4) is amended by striking “,
9 with the approval of the Register of Copyrights,”.

10 (9) Section 803(c)(7) is amended by striking
11 “of Copyright” and inserting “of the Copyright”.

12 (10) Section 803(d)(2)(C)(i)(I) is amended by
13 striking “statements of account and any report of
14 use” and inserting “applicable statements of account
15 and reports of use”.

16 (11) Section 803(d)(3) is amended by striking
17 “If the court, pursuant to section 706 of title 5,
18 modifies” and inserting “Section 706 of title 5 shall
19 apply with respect to review by the court of appeals
20 under this subsection. If the court modifies”.

21 (12) Section 804(b)(1)(B) is amended—

22 (A) by striking “801(b)(3)(B) or (C)” and
23 inserting “801(b)(2)(B) or (C)”; and

24 (B) in the last sentence, by striking
25 “change is” and inserting “change in”.

1 (13) Section 804(b)(3) is amended—

2 (A) in subparagraph (A), by striking “ef-
3 fective date” and inserting “date of enact-
4 ment”; and

5 (B) in subparagraph (C)—

6 (i) in clause (ii), by striking “that is
7 filed” and inserting “is filed”; and

8 (ii) in clause (iii), by striking “such
9 subsections (b)” and inserting “subsections
10 (b)”.

11 **SEC. 4. ADDITIONAL TECHNICAL AMENDMENTS.**

12 (a) DISTRIBUTION OF ROYALTY FEES.—Section
13 111(d) of title 17, United States Code, is amended—

14 (1) in the second sentence of paragraph (2), by
15 striking all that follows “Librarian of Congress” and
16 inserting “upon authorization by the Copyright Roy-
17 alty Judges.”;

18 (2) in paragraph (4)—

19 (A) in subparagraph (B)—

20 (i) by striking the second sentence
21 and inserting the following: “If the Copy-
22 right Royalty Judges determine that no
23 such controversy exists, the Copyright Roy-
24 alty Judges shall authorize the Librarian
25 of Congress to proceed to distribute such

1 fees to the copyright owners entitled to re-
2 ceive them, or to their designated agents,
3 subject to the deduction of reasonable ad-
4 ministrative costs under this section.”; and

5 (ii) in the last sentence, by striking
6 “finds” and inserting “find”; and

7 (B) by striking subparagraph (C) and in-
8 serting the following:

9 “(C) During the pendency of any pro-
10 ceeding under this subsection, the Copyright
11 Royalty Judges shall have the discretion to au-
12 thorize the Librarian of Congress to proceed to
13 distribute any amounts that are not in con-
14 troversy.”.

15 (b) SOUND RECORDINGS.—Section 114(f) of title 17,
16 United States Code, is amended—

17 (1) in paragraph (1)(A), in the first sentence,
18 by striking “except where” and all that follows
19 through the end period and inserting “except in the
20 case of a different transitional period provided under
21 section 6(b)(3) of the Copyright Royalty and Dis-
22 tribution Reform Act of 2004, or such other period
23 as the parties may agree.”;

24 (2) by amending paragraph (2)(A) to read as
25 follows:

1 “(2)(A) Proceedings under chapter 8 shall de-
2 termine reasonable rates and terms of royalty pay-
3 ments for public performances of sound recordings
4 by means of eligible nonsubscription transmission
5 services and new subscription services specified by
6 subsection (d)(2) during the 5-year period beginning
7 on January 1 of the second year following the year
8 in which the proceedings are to be commenced, ex-
9 cept in the case of a different transitional period
10 provided under section 6(b)(3) of the Copyright Roy-
11 alty and Distribution Reform Act of 2004, or such
12 other period as the parties may agree. Such rates
13 and terms shall distinguish among the different
14 types of eligible nonsubscription transmission serv-
15 ices and new subscription services then in operation
16 and shall include a minimum fee for each such type
17 of service. Any copyright owners of sound recordings
18 or any entities performing sound recordings affected
19 by this paragraph may submit to the Copyright Roy-
20 alty Judges licenses covering such eligible non-
21 subscription transmissions and new subscription
22 services with respect to such sound recordings. The
23 parties to each proceeding shall bear their own
24 costs.”; and

1 (3) in paragraph (2)(B), in the last sentence,
 2 by striking “negotiated under” and inserting “de-
 3 scribed in”.

4 (c) PHONORECORDS OF NONDRAMATIC MUSICAL
 5 WORKS.—Section 115(c)(3) of title 17, United States
 6 Code, is amended—

7 (1) in subparagraph (B), by striking “subpara-
 8 graphs (B) through (F)” and inserting “this sub-
 9 paragraph and subparagraphs (C) through (E)”;

10 (2) in subparagraph (D), in the third sentence,
 11 by inserting “in subparagraphs (B) and (C)” after
 12 “described”; and

13 (3) in subparagraph (E), in clauses (i) and
 14 (ii)(I), by striking “(C) or (D)” each place it ap-
 15 pears and inserting “(C) and (D)”.

16 (d) NONCOMMERCIAL BROADCASTING.—Section 118
 17 of title 17, United States Code, is amended—

18 (1) in subsection (b)(3), by striking “copyright
 19 owners in works” and inserting “owners of copyright
 20 in works”; and

21 (2) in subsection (c)—

22 (A) in the matter preceding paragraph (1),
 23 by striking “established by” and all that follows
 24 through “engage” and inserting “established by

1 the Copyright Royalty Judges under subsection
2 (b)(4), engage”; and

3 (B) in paragraph (1), by striking “(g)”
4 and inserting “(f)”.

5 (e) SATELLITE CARRIERS.—Section 119 of title 17,
6 United States Code, is amended—

7 (1) in subsection (b)(4)—

8 (A) in subparagraph (B), by striking the
9 second sentence and inserting the following: “If
10 the Copyright Royalty Judges determine that
11 no such controversy exists, the Copyright Roy-
12 alty Judges shall authorize the Librarian of
13 Congress to proceed to distribute such fees to
14 the copyright owners entitled to receive them,
15 or to their designated agents, subject to the de-
16 duction of reasonable administrative costs
17 under this section.”; and

18 (B) by amending subparagraph (C) to read
19 as follows:

20 “(C) WITHHOLDING OF FEES DURING
21 CONTROVERSY.—During the pendency of any
22 proceeding under this subsection, the Copyright
23 Royalty Judges shall have the discretion to au-
24 thorize the Librarian of Congress to proceed to

1 distribute any amounts that are not in con-
2 troversy.”; and

3 (2) in subsection (c)(1)(F)(i), in the last sen-
4 tence, by striking “arbitrary” and inserting “arbitra-
5 tion”.

6 (f) DIGITAL AUDIO RECORDING DEVICES.—Section
7 1007 of title 17, United States Code, is amended—

8 (1) in subsection (b)—

9 (A) in the second sentence, by striking
10 “Librarian of Congress” and inserting “Copy-
11 right Royalty Judges”; and

12 (B) in the last sentence, by striking “by
13 the Librarian”; and

14 (2) in subsection (c), in the last sentence, by
15 striking “by the Librarian”.

16 (g) REMOVAL OF INCONSISTENT PROVISIONS.—The
17 amendments contained in subsection (h) of section 5 of
18 the Copyright Royalty and Distribution Reform Act of
19 2004 shall be deemed never to have been enacted.

20 (h) EFFECTIVE DATE.—Section 6(b)(1) of the Copy-
21 right Royalty and Distribution Reform Act of 2004 (Pub-
22 lic Law 108–419) is amended by striking “commenced be-
23 fore the date of enactment of this Act” and inserting
24 “commenced before the effective date provided in sub-
25 section (a)”.

1 **SEC. 5. EFFECTIVE DATE.**

2 This Act and the amendments made by this Act shall
3 be effective as if included in the Copyright Royalty and
4 Distribution Reform Act of 2004.

5 **SEC. 5. PARTIAL DISTRIBUTION OF ROYALTY FEES.**

6 Section 801(b)(3)(C) of title 17, United States Code,
7 is amended—

8 (1) by striking all that precedes clause (i) and
9 inserting the following:

10 “(C) Notwithstanding section 804(b)(8), the
11 Copyright Royalty Judges, at any time after the fil-
12 ing of claims under section 111, 119, or 1007, may,
13 upon motion of one or more of the claimants and
14 after publication in the Federal Register of a request
15 for responses to the motion from interested claimants,
16 make a partial distribution of such fees, if, based
17 upon all responses received during the 30-day period
18 beginning on the date of such publication, the Copy-
19 right Royalty Judges conclude that no claimant enti-
20 tled to receive such fees has stated a reasonable objec-
21 tion to the partial distribution, and all such claim-
22 ants—”; and

23 (2) in clause (i), by striking “such” and insert-
24 ing “the”.

1 **SEC. 6. EFFECTIVE DATE.**

2 (a) *IN GENERAL.*—*Except as provided under sub-*
3 *section (b), this Act and the amendments made by this Act*
4 *shall be effective as if included in the Copyright Royalty*
5 *and Distribution Reform Act of 2004.*

6 (b) *PARTIAL DISTRIBUTION OF ROYALTY FEES.*—*Sec-*
7 *tion 5 shall take effect on the date of enactment of this Act.*

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109TH CONGRESS
2^D Session

H. R. 1036

AN ACT

To amend title 17, United States Code, to make technical corrections relating to Copyright Royalty Judges, and for other purposes.

JULY 13, 2006

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